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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Polices and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of	)	
Consumers' Long Distance Carriers	)	

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COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ON PETITIONS FOR RECONSIDERATION

Respectfully submitted,

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COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ON PETITIONS FOR RECONSIDERATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits to the Federal Communications Commission ("Commission") its comments in response to the Petitions for Reconsideration submitted in this proceeding.[1]

I. INTRODUCTION AND SUMMARY

The Commission instituted this proceeding on its own motion to review its policies governing changes in a customer's pre-selected long distance carrier (commonly known as a "Primary Interexchange Carrier" or "PIC"), and proposed several specific rules relating to unauthorized switches. The Commission's PIC change rules are designed to strike an appropriate balance between the need to protect customers from unauthorized changes and

[1] Petitions for Reconsideration were filed by the following: Frontier Corporation, MCI Telecommunications Corp., The National Association of Attorneys General Telecommunications Subcommittee ("Attorneys General"), Allnet Communications Services, Inc., Sprint Communications Company, and AT&T.

the need to preserve an interexchange carrier's ("IXC") flexibility to market its services in ways that will best respond to the dictates of open competition among carriers.

Thus, in its initial comments, CompTel urged the Commission to maintain this balance in the rules it would adopt pursuant to this proceeding.[2] CompTel stated that, on the whole, the Commission's existing rules regarding the role of letters of agency ("LOAs") in the PIC change process have been successful in facilitating legitimate marketing while deterring unscrupulous practices.[3] Therefore, CompTel recommended that any changes to these rules be limited to those necessary to address specific demonstrable problems with the PIC change rules.[4]

CompTel generally supports the Commission's new LOA requirements as set forth in the Report and Order.[5] However, CompTel shares some of the concerns expressed by others in their Petitions for Reconsideration. Specifically, CompTel agrees that verification requirements should not apply to inbound calls and that separate LOAs should not be required in standard contract cases. CompTel opposes the Attorneys General's proposal to absolve customers of all charges when their phones are improperly switched, which will punish inadvertent unauthorized switches and will invite abuse by telephone customers.

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[2] CompTel Comments at 2.

[3] *Id.*

[4] *Id.*

[5] *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers,* CC Docket No. 94-129, *Report and Order*, FCC 95-225, released June 14, 1995 ("Report and Order").

CompTel again urges the Commission to focus on maintaining the balance between consumer protection and the need for flexible marketing practices that it achieved under its previous rules. The new LOA rules should help clarify the scope of permissible IXC marketing and address problems in marketing that currently exist. The new LOA rules should not, however, attempt to correct problems that do not exist, or that may occur only in an insubstantial number of instances. Because the Commission's new rules are more extensive than needed to address existing problems, CompTel supports limited reconsideration of the LOA rules.

II. THE VERIFICATION REQUIREMENTS ADOPTED BY THE COMMISSION SHOULD NOT APPLY TO INBOUND CALLS

In its Report and Order, the Commission extended PIC verification procedures to consumer-initiated calls to IXC business numbers stating that the commenters opposed to this requirement "fail[ed] to explain adequately why a consumer who initially places a call to an IXC's business number, presumably searching for information, should benefit less from rules designed to curb deceptive practices than the consumer receiving a call from a telemarketer."[6] This statement incorrectly frames the issue at hand and overlooks many relevant facts.

To begin, the facts conclusively show that inbound calls are an insignificant source of unauthorized switches and generate very few consumer complaints to the Commission. None of the comments filed presented any specific examples of instances where a customer was

[6] *Report and Order* at ¶ 42.

improperly switched as a result of a call he or she made to an IXC. Moveover, MCI, Sprint and AT&T each point out in their Petitions, in a sampling of slamming complaints reviewed by the Commission, fewer than one percent of the total number of slamming complaints sampled resulted from consumer-made inbound calls.[7] As MCI pointed out, "'In-bound' calls presented such a small problem that, while the Commission separated its sample of 430 unauthorized conversion complaints into 11 major categories, it did not even list in-bound calls as a category."[8] Thus, the additional verification procedures could at best avoid only a tiny percentage of unauthorized switches.

The facts also show that application of these verification requirements to inbound calls will impose substantial costs on IXCs, which, given the *de minimis* number of complaints arising from such calls, are unduly burdensome. AT&T estimates that the cost of implementing these confirmation methods at its inbound calling centers for residential subscribers could be as high as $36.5 million annually, not including the estimated $3.1 million in start up costs.[9] MCI estimates that it would need to spend approximately $1.5 million in capital expenses for equipment and hardware to build the infrastructure needed to verify inbound sales to residential customers.[10] Operational costs are estimated to be an additional $6.3 million in the first twelve months after the Report and Order is

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7 *See* AT&T Petition at 7; MCI Petition at 5; Sprint Petition at 7.

8 MCI Petition at 5 n. 8.

9 AT&T Petition at 10.

10 MCI Petition at 8; Declaration of Wayne E. Huyard at ¶ 5a.

implemented.[11] Sprint estimates that both the direct costs of verification and the foregone revenue resulting from lost accounts or delays in connecting customers to the new carrier's network would exceed $10 million in the first year alone.[12] Sprint estimates that such inbound verification requirements will cost $8.9 million annually thereafter.[13]

Although CompTel has not estimated the magnitude of the expense that its own members will experience, it is clear that they, like AT&T, MCI and Sprint, will have to make significant changes to their customer service facilities in order to comply with the verification requirement for inbound calls. All IXCs will have to make the changes that AT&T, MCI and Sprint describe, the only variable will be the magnitude of the cost for each IXC. In addition, many of CompTel's members do not conduct any outbound telemarketing and, as a result, currently are not subject to the telemarketing verification requirements. These IXCs would have to contract with an independent verification company, or make other changes to their procedures to comply with the new rules. Whereas these IXCs previously were able to decide, by choosing to engage in telemarketing, whether they wished to incur these expenses, under the Commission's new rules these costs are unavoidable.

Second, the Commission's assumption that inbound callers are seeking only "general information" is not supported by the record. It is the experience of most IXCs that calls initiated by customers are substantially different from telemarketing calls and are generally in

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11 MCI Petition at 8; Declaration of Wayne E. Huyard at ¶ 5a.

12 Sprint Petition at 13.

13 *Id.*

response to promotions and advertising.[14] According to MCI, in a random sample drawn from inbound calls to MCI numbers in response to advertisements, 81 percent of those surveyed either called to switch their service to MCI or were current MCI subscribers with customer service questions. Only 7 percent said that they called to obtain more information.[15] For CompTel members who do not rely on mass media advertisements, the percentage of callers seeking "general information" is likely to be even smaller. In short, CompTel believes that calls to its members' "business numbers" are made for "business" purposes, not informational purposes.

Inbound calls can constitute a major component of legitimate marketing plans for IXCs. These calls are not a significant source of unauthorized switches and the record before the Commission is inadequate to demonstrate a need for the new verification requirements -- and certainly is insufficient to justify imposing on IXCs millions of dollars of additional costs each year. For these reasons, CompTel opposes the application of verification requirements to inbound calls. There is no evidence that the balance previously struck by the Commission failed to weigh the competing interests. Without such evidence, CompTel submits that it is unwise to alter rules which had been working effectively for years.

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[14] *See, e.g.,* Sprint Petition at 13-14; MCI Petition at 6-8.

[15] MCI Petition and 7-8. According to Sprint, inbound calls result in a PIC change order approximately 20 times more often than telemarketing calls. Sprint Petition at 13-14. MCI also states that inbound calls lead to a relatively high number of service orders. MCI Petition at 7.

III. THE SEPARATE LOA REQUIREMENT SHOULD NOT APPLY WHERE SERVICE IS ARRANGED PURSUANT TO FORMAL WRITTEN CONTRACTS

CompTel agrees with Frontier Corp. that the Commission should clarify, or in the alternative, reconsider the applicability of its LOA rules to customers that have executed written contracts. Applying the LOA rules to such customers will not advance the Commission's cause of minimizing unauthorized PIC changes, or deceptive and misleading marketing practices.

Standard business contracts are fundamentally different from contest entries, sweepstakes, or other inducements that the Commission concluded may be deceptive. These contracts typically are the product of the "give and take" of negotiations between a customer and an IXC's sales representative. In addition, the customers with contracts are generally business customers, who, on the whole, are more sophisticated about telecommunications matters than average consumers. As Frontier states, "[i]n these circumstances, the customer undoubtedly knows the carrier with whom he or she is dealing and, therefore, the possibility of the customer being confused or mislead is virtually nonexistent."[16] Further, the fact that a customer negotiates and signs a contract is strong evidence that the customer has chosen a particular carrier. Thus, the separate LOA requirement should not apply where customers execute *bona fide* written contracts for long distance service.

[16] Frontier Petition at 2.

IV. CONSUMERS SHOULD NOT BE ABSOLVED OF LIABILITY FOR ALL CHARGES WHEN AN UNAUTHORIZED SWITCH OCCURS

In the Report and Order, the Commission characterized its customer liability rule as a "make whole" remedy that limits a customer's liability to the IXC providing service after an improper switch to the amount of toll charges the customer would have paid if the PIC had never been changed. The Commission selected this approach because:

> The 'slammed' consumer does receive a service, even though the service is being provided by an unauthorized entity. The consumer expects to pay the original rate to the original IXC for the service. Except for the time and inconvenience spent in obtaining the original PIC, consumers are not injured if their liability is limited to paying the toll charges they would have paid to the original IXC.[17]

The Commission explicitly chose not to relieve consumers of all liability, stating, "we are not convinced that we should, as a policy matter, adopt that option at this time."[18]

In their petition, the Attorneys General ask the Commission to revise this latter conclusion and eliminate <u>any</u> customer liability where the switching IXC cannot document that the customer authorized the switch in accordance with the law.[19] In short, the Attorneys General propose that if an unauthorized switch has occurred, the customer should receive free long distance from the IXC who provided service. The Attorney General's primary arguments in favor of this consumer windfall is that the rule will aid enforcement

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[17] *Report and Order* at ¶ 37.

[18] *Id.*

[19] *See* Attorneys General Petition at 5, 17.

efforts to punish those intentionally submitting unauthorized PIC changes and deter others who might submit such orders.[20]

Although enforcement certainly is an important part of federal and state efforts to eliminate slamming, CompTel opposes the change proposed by the Attorneys General. Completely relieving customers of liability for services rendered by unauthorized carriers is disproportionate to the harm a customer suffers. As the Commission noted, the "slammed" customer does receive a service, and the consumer expects to pay a certain charge for that service -- i.e., the original rate charged by his preferred IXC. Therefore, it does not harm the consumer to require him or her to pay for the services received. Indeed, in an early formal complaint alleging an unauthorized switch, the Commission concluded, "The correct measure of any damages due to long distance charges in this case would be the Complainant's out of pocket expenses, which would be the difference between what Complainant paid and what he would have paid had he been properly connected [to his chosen carrier]."[21] The Commission denied the complaint in that instance because the carrier offered "complete forgiveness" of the long-distance charges, which "exceeds the damages suffered by complainant."[22] CompTel agrees that, as long as customers do not pay more than they would have if no switch had occurred, they are "made whole" by the Commission's rules.

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[20] Attorneys General Petition at 5-7.

[21] *Franks v. U.S. Telephone, Inc.*, File No. E-86-11, 1986 FCC LEXIS 3498, at ¶ 12 (May 7, 1986).

[22] *Id.* (emphasis added).

A policy that absolved consumers completely would constitute a windfall to consumers, which may distort the entire PIC change process. For example, a customer who learns immediately that his phone has been switched, may, under the Attorneys General rule, choose to wait as long as possible before disputing the PIC in order to increase the amount of free long distance he receives. Further, such windfalls may encourage "buyer's remorse," where a consumer orders a PIC change and later seeks to escape that choice by disputing the PIC. This would have a seriously detrimental impact on LECs, IXCs and the PIC change process as a whole, as the number of PIC disputes, many of which would be specious, increases.

Moreover, this rule is not needed to deter slamming. The Commission has ample alternatives which may be used to isolate abusers of its rules. One such alternative is the Commission's complaint process, both formal and informal. There has been no evidence presented that these processes fail to provide consumers with an effective remedy when an unauthorized switch occurs. In addition, the Commission has the power to impose forfeitures for violations of the PIC change rules, a power the Commission has exercised on at least three occasions in recent months. Finally, serious and repeated abuses could lead to a hearing to revoke a carrier's operating authority under Section 214 of the Communications Act of 1934, as amended. The states, for their part, have similar alternatives available to them.[23]

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[23] Indeed, several states are taking steps to revoke the operating authority of one of the most prominent slammers, Sonic Communications.

Furthermore, the Commission's three recent Notices of Apparent Liability ("NALs") for slamming are much more of a deterrent than the customer liability rule proposed by the Attorneys General would be. In March, 1995, the Commission issued an NAL to Oncor Communications, Inc. in which it proposed a forfeiture exceeding $1.4 million. In August, 1995, similar Notices were issued to ISI Telecommunications and Excel Telecommunications, Inc. for a combined amount of $120,000. These proposed forfeitures are in the tens of thousands of dollars per phone -- an amount much greater than the toll charges collected from the customers alleged to have been slammed. Such significant fines, along with the negative publicity they generate for a carrier, adequately penalize abusers of the Commission's rules and deter other potential slammers. Slamming is a serious offense, and the NALs emphasize its seriousness.

In summary, CompTel strongly opposes relieving customers from all liability for long distance services received from an unauthorized carriers. The Commission's rule adequately compensates the customer for any damage he may suffer as a result of an improper switch. Further, the Commission should employ other, more effective, methods of penalizing and deterring slammers.

V. CONCLUSION

CompTel strongly supports the Commission's effort to prevent deceptive and confusing marketing practices, particularly as they involve LOAs. However, CompTel joins the other Petitioners for Reconsideration in their concern that the application of the verification requirement to inbound calls is unduly burdensome given the limited nature of the problem. Thus, CompTel respectfully requests the Commission to reconsider this feature of its new rules and to limit the verification requirement to outbound calls only. In addition, CompTel respectfully requests that the Commission revisit its separate LOA requirement to clarify that this requirement does not apply where the customer has executed a *bona fide* written contract for long distance service. Finally, CompTel urges to the Commission to stand by its current policy on customer liability.

Respectfully submitted,

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September 8, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 1995, I caused copies of the foregoing "Comments of the Competitive Telecommunications Association" to be served via first class mail, postage prepaid, on each of the following parties listed below:

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